

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

USA,

Plaintiff,

v.

JOSEPH J. VIOLA,

Defendant.

Case No. [5:10-cr-00588-EJD-1](#)

**ORDER DENYING CERTIFICATE OF
APPEALABILITY**

In an order filed on March 30, 2017, this court denied Petitioner Joseph J. Viola's petition for a writ of habeas corpus under 28 U.S.C. § 2255 because he waived his right to bring a § 2255 petition. The court also found that the United States properly filed and served its motion to dismiss and that the indictment properly alleged mail fraud. The court granted Respondent's motion to dismiss on those grounds. Petitioner appealed. The court now considers whether Petitioner is entitled to a certificate of appealability ("COA").

When, as here, "the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find

1 it debatable whether the petition states a valid claim of the denial of a constitutional right, and that
2 jurists of reason would find it debatable whether the district court was correct in its procedural
3 ruling.” Slack v. McDaniel, 529 U.S. 473, 478 (2000). Having reviewed the record here, the court
4 finds that “jurists of reason” could not find debatable that Petitioner waived his right to bring a
5 § 2255 petition. As discussed in the order, Petitioner’s plea agreement stated: “I agree to waive
6 any right I may have to file any collateral attack on my conviction or sentence, including a petition
7 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any time in the
8 future after I am sentenced.” Dkt. No. 147 at 2. That waiver is enforceable.

9 Accordingly, the court DENIES a certificate of appealability.

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11 **IT IS SO ORDERED.**

12 Dated: April 26, 2017

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14 EDWARD J. DAVILA
15 United States District Judge
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